

107TH CONGRESS
1ST SESSION

S. 1259

To amend the Immigration and Nationality Act with respect to the admission of nonimmigrant nurses.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2001

Mr. BROWNBACK (for himself, Mr. GRAHAM, and Mr. HELMS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act with respect to the admission of nonimmigrant nurses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rural and Urban
5 Health Care Act of 2001”.

6 **SEC. 2. REQUIREMENTS FOR ADMISSION OF NON-** 7 **IMMIGRANT NURSES.**

8 (a) REQUIREMENTS.—Section 212(m) of the Immi-
9 gration and Nationality Act (8 U.S.C. 1182(m)) is amend-
10 ed to read as follows:

1 “(m)(1) The qualifications referred to in the section
2 101(a)(15)(i)(c), with respect to an alien who is coming
3 to the United States to perform nursing services for a fa-
4 cility, are that the alien—

5 “(A) has obtained a full and unrestricted li-
6 cense to practice professional nursing in the country
7 where the alien obtained nursing education, or has
8 received nursing education in the United States or
9 Canada;

10 “(B) has passed the examination given by the
11 Commission on Graduates of Foreign Nursing
12 Schools (or has passed another appropriate examina-
13 tion recognized in regulations promulgated in con-
14 sultation with the Secretary of Health and Human
15 Services), or has a full and unrestricted license
16 under State law to practice professional nursing in
17 the State of intended employment; and

18 “(C) is fully qualified and eligible under the
19 laws (including such temporary or interim licensing
20 requirements which authorize the nurse to be em-
21 ployed) governing the place of intended employment
22 to take the State licensure examination after entry
23 into the United States, and the lack of a social secu-
24 rity number shall not indicate a lack of eligibility to
25 take the State licensure examination.

1 “(2)(A) The attestation referred to in section
2 101(a)(15)(H)(i)(c), with respect to a facility for which
3 an alien will perform services, is an attestation as to the
4 following:

5 “(i) The employment of the alien will not ad-
6 versely affect the wages and working conditions of
7 registered nurses similarly employed at the facility.

8 “(ii) The alien employed by the facility will be
9 paid the wage rate for registered nurses similarly
10 employed by the facility.

11 “(iii) There is not a strike or lockout in the
12 course of a labor dispute, the facility did not lay off
13 and will not lay off a registered staff nurse who pro-
14 vides patient care and who is employed by the facil-
15 ity within the period beginning 90 days before and
16 ending 90 days after the date of filing of any visa
17 petition for clarification of such an alien under sec-
18 tion 101(a)(15)(H)(i)(c), and the employment of
19 such an alien is not intended or designed to influ-
20 ence an election for a bargaining representative for
21 registered nurses of the facility.

22 “(iv) At the time of the filing of the petition for
23 registered nurses under section 101(a)(15)(H)(i)(c),
24 notice of the filing has been provided by the facility
25 to the bargaining representative of the registered

1 nurses at the facility or, where there is no such bar-
2 gaining representative, notice of the filing has been
3 provided to the registered nurses employed by the
4 employer at the facility through posting in con-
5 spicuous locations.

6 “(v) The facility will not, with respect to any
7 alien issued a visa or otherwise provided non-
8 immigrant status under section
9 101(a)(15)(H)(i)(c)—

10 “(I) authorize the alien to perform nursing
11 services at any worksite other than a worksite
12 controlled by the facility; or

13 “(II) transfer the place of employment of
14 the alien from one worksite to another.

15 “(B) A copy of the attestation shall be provided, with-
16 in 30 days of the date of filing, to registered nurses em-
17 ployed at the facility on the date of filing.

18 “(C) The Secretary of Labor shall review an attesta-
19 tion only for completeness and obvious inaccuracies. Un-
20 less the Secretary finds that the attestation is incomplete
21 or obviously inaccurate, the Secretary shall certify the at-
22 testation within 7 calendar days of the date of the filing
23 of the attestation. If the attestation is not returned to the
24 facility within 7 calendar days, the attestation shall be
25 deemed certified.

1 “(D) Subject to subparagraph (F), an attestation
2 under subparagraph (A)—

3 “(i) shall expire on the date that is the later
4 of—

5 “(I) the end of the three-year period begin-
6 ning on the date of its filing with the Secretary;
7 or

8 “(II) the end of the period of admission
9 under section 101(a)(15)(H)(i)(c) of the last
10 alien with respect to whose admission it was ap-
11 plied (in accordance with clause (ii)); and

12 “(ii) shall apply to petitions filed during the
13 three-year period beginning on the date of its filing
14 with the Secretary if the facility states in each such
15 petition that it continues to comply with the condi-
16 tions in the attestation.

17 “(E) A facility may meet the requirements under this
18 paragraph with respect to more than one registered nurse
19 in a single petition.

20 “(F)(i) The Secretary shall compile and make avail-
21 able for public examination in a timely manner in Wash-
22 ington, D.C., a list identifying facilities which have filed
23 petitions for classification of nonimmigrants under section
24 101(a)(15)(H)(i)(c) and, for each such facility, a copy of

1 the facility's attestation under subparagraph (A) and each
2 such petition filed by the facility.

3 “(ii) The Secretary shall establish a process, includ-
4 ing reasonable time limits, for the receipt, investigation,
5 and disposition of complaints respecting a facility's failure
6 to meet conditions attested to or a facility's misrepresenta-
7 tion of a material fact in an attestation. Complaints may
8 be filed by any aggrieved person or organization (including
9 bargaining representatives, associations deemed appro-
10 priate by the Secretary, and other aggrieved parties as de-
11 termined under regulations of the Secretary, but excluding
12 any governmental agency or entity). The Secretary shall
13 conduct an investigation under this clause if there is prob-
14 able cause to believe that a facility willfully failed to meet
15 conditions attested to. Subject to the time limits estab-
16 lished under this clause, this subparagraph shall apply re-
17 gardless of whether or not an attestation is expired or un-
18 expired at the time a complaint is filed.

19 “(iii) Under such process, the Secretary shall provide,
20 within 180 days after the date such a complaint is filed,
21 for a determination as to whether or not a basis exists
22 to make a finding described in clause (iv). If the Secretary
23 determines that such a basis exists, the Secretary shall
24 provide for notice of such determination to the interested

1 parties and an opportunity for a hearing on the complaint
2 within 60 days of the date of the determination.

3 “(iv) If the Secretary finds, after notice and oppor-
4 tunity for a hearing, that a facility (for which an attesta-
5 tion is made) has willfully failed to meet a condition at-
6 tested to or that there was a willful misrepresentation of
7 material fact in the attestation, the Secretary shall notify
8 the Attorney General of such finding and may, in addition,
9 impose such other administrative remedies (including civil
10 monetary penalties in an amount not to exceed \$1,000 per
11 nurse per violation, with the total penalty not to exceed
12 \$10,000 per violation) as the Secretary determines to be
13 appropriate. Upon receipt of such notice, the Attorney
14 General shall not approve petitions filed with respect to
15 a facility during a period of at least one year for nurses
16 to be employed by the facility.

17 “(v) In addition to the sanctions provided for under
18 clause (iv), if the Secretary finds, after notice and an op-
19 portunity for a hearing, that a facility has violated the
20 condition attested to under subparagraph (A)(ii) (relating
21 to payment of registered nurses at the facility wage rate),
22 the Secretary shall order the facility to provide for pay-
23 ment of such amounts of back pay as may be required
24 to comply with such condition.

1 “(G)(i) The Secretary shall impose on a facility filing
2 an attestation under subparagraph (A) a filing fee in an
3 amount prescribed by the Secretary based on the costs of
4 carrying out the Secretary’s duties under this subsection,
5 but not exceeding \$250.

6 “(ii) Fees collected under this subparagraph shall be
7 deposited in a fund established for this purpose in the
8 Treasury of the United States.

9 “(iii) The collected fees in the fund shall be available
10 to the Secretary, to the extent and in such amounts as
11 may be provided in appropriations Acts, to cover the costs
12 described in clause (i), in addition to any other funds that
13 are available to the Secretary to cover such costs.

14 “(3) The period of admission of an alien under sec-
15 tion 101(a)(15)(H)(i)(c) shall be for an initial period not
16 to exceed three years, subject to an extension for a period
17 or periods not to exceed a total period of admission of
18 six years.

19 “(4) A facility that has filed a petition under section
20 101(a)(15)(H)(i)(c) to employ a nonimmigrant to perform
21 nursing services for the facility—

22 “(A) shall provide the nonimmigrant a wage
23 rate and working conditions commensurate with
24 those of nurses similarly employed by the facility;
25 and

1 “(B) shall not interfere with the right of the
2 nonimmigrant to join or organize a union.

3 “(5)(A) For purposes of paragraph (2)(A)(iii), the
4 term ‘lay off’, with respect to a worker—

5 “(i) means to cause the worker’s loss of employ-
6 ment, other than through a discharge for inadequate
7 performance, violation of workplace rules, cause, vol-
8 untary departure, voluntary retirement, or the expi-
9 ration of a grant or contract; but

10 “(ii) does not include any situation in which the
11 worker is offered, as an alternative to such loss of
12 employment, a similar employment opportunity with
13 the same employer at equivalent or higher com-
14 pensation and benefits than the position from which
15 the employee was discharged, regardless of whether
16 or not the employee accepts the offer.

17 “(B) Nothing in this paragraph is intended to limit
18 an employee’s or an employer’s rights under a collective
19 bargaining agreement or other employment contract.

20 “(6) For purposes of this subsection and section
21 101(a)(15)(H)(i)(c), the term ‘facility’ includes a hospital,
22 nursing home, skilled nursing facility, registry, clinic, as-
23 sisted-living center, and an employer who employs any reg-
24 istered nurse in a home setting.

1 “(7) Except as otherwise provided, in this subsection,
2 the term ‘Secretary’ means the Secretary of Labor.”.

3 (b) IMPLEMENTATION.—Not later than 90 days after
4 the date of the enactment of this Act, the Secretary of
5 Labor (in consultation, to the extent required, with the
6 Secretary of Health and Human Services) and the Attor-
7 ney General shall promulgate final or interim final regula-
8 tions to carry out section 212(m) of the Immigration and
9 Nationality Act (as amended by subsection (a)) The
10 amendments made by this section shall take effect not
11 later than 90 days after the date of the enactment of this
12 Act, without regard to whether or not regulations to carry
13 out such amendments have been promulgated by such
14 date.

15 **SEC. 3. REPEAL.**

16 Section 3 of the Nursing Relief for Disadvantaged
17 Areas Act of 1999 (Public Law 106–95; 8 U.S.C. 1182
18 note; relating to recommendations for alternative remedy
19 for nursing shortage) is repealed.

20 **SEC. 4. QUALIFICATION FOR CERTAIN ALIEN NURSES.**

21 (a) ELIMINATION OF CERTAIN GROUNDS OF
22 INADMISSABILITY.—Section 212 of the Immigration and
23 Nationality Act (8 U.S.C. 1182) is amended by striking
24 subsections (a)(5)(C) and (r).

1 (b) PROCEDURE FOR GRANTING IMMIGRANT STA-
 2 TUS.—Section 204(a)(1)(F) of the Immigration and Na-
 3 tionality Act (8 U.S.C. 1154(a)(1)(F)) is amended by add-
 4 ing at the end the following new sentence: “Any such peti-
 5 tion filed on behalf of an alien who will be employed as
 6 a professional nurse shall include evidence that the alien—

7 “(i) has passed—

8 “(I) the examination given by the
 9 Commission on Graduates of Foreign
 10 Nursing Schools (CGFNS); or

11 “(II) another appropriate exam-
 12 ination recognized in regulations pro-
 13 mulgated in consultation with the Sec-
 14 retary of Health and Human Services;
 15 or

16 “(ii) holds a full and unrestricted li-
 17 cense to practice professional nursing in
 18 the State of intended employment.”.

19 **SEC. 5. WAIVERS OF TWO-YEAR FOREIGN RESIDENCE RE-**
 20 **QUIREMENT.**

21 (a) IN GENERAL.—Section 214(l) of the Immigration
 22 and Nationality Act (8 U.S.C. 1184(l)) is amended—

23 (1) in paragraph (1)(B), by striking “20” and
 24 inserting “40, plus the number of waivers specified
 25 in paragraph (4)”; and

1 (2) by adding at the end the following new
2 paragraph:

3 “(4) The number of waivers specified in this para-
4 graph is the total number of unused waivers allotted to
5 all States for a fiscal year divided by the number of States
6 having no unused waivers remaining in the allotment to
7 those States for that fiscal year.”.

8 (b) **ELIMINATION OF TERMINATION DATE.**—Section
9 220(c) of the Immigration and Nationality Technical Cor-
10 rections Act of 1994 (Public Law 103–416, as amended;
11 8 U.S.C.1182 note) is amended by striking “and before
12 June 1, 2002”.

13 **SEC. 6. OTHER MEASURES TO MEET RURAL AND URBAN**
14 **HEALTH CARE NEEDS.**

15 (a) **GRANT AUTHORITY.**—The Secretary of Health
16 and Human Services shall award grants to States, local
17 governments, and institutions of higher education (as de-
18 fined in section 101(a) of the Higher Education Act of
19 1965) to fund training, recruitment, and other activities
20 to increase the supply of domestic registered nurses and
21 other needed health care providers.

22 (b) **APPLICATION.**—

23 (1) **IN GENERAL.**—Each eligible entity desiring
24 a grant under this section shall submit an applica-
25 tion to the Secretary of Health and Human Services

1 at such time, in such manner, and accompanied by
2 such information as the Secretary may reasonably
3 require.

4 (2) CONTENTS.—Each application submitted
5 pursuant to paragraph (1) shall—

6 (A) describe the activities for which assist-
7 ance under this section is sought; and

8 (B) provide such additional assurances as
9 the Secretary of Health and Human Services
10 determines to be essential to ensure compliance
11 with the requirements of this section.

12 (c) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to the Department of
14 Health and Human Services such sums as may be nec-
15 essary to carry out this section.

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